

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS, )  
                    )  
Plaintiff,       ) C.A. No.: 04-1350 (GMS)  
                    )  
v.                )  
                    )  
SYLVIA FOSTER, LANCE SAPERS, )  
DAVE MOFFITT, R. GRAY,       )  
MR. JOHNSON, JOHN JOE,     )  
                    )  
Defendants.      )

**DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S  
MOTION FOR DECLARATION ORDER TO SEAL RON HARTNETT'  
DEPOSITION OF THE PLAINTIFF**

COME NOW, Defendant, Dr. Sylvia Foster, by and through her undersigned counsel and responds to Plaintiff's Motion for Declaration Order to Seal Ron Hartnett Deposition of the Plaintiff, and in support thereof, avers the following:

1. Plaintiff, Jimmie Lewis, filed the present Motion on January 9, 2007 contending Defendant, Dr. Sylvia Foster, and in particular, counsel for Dr. Foster, Ronald W. Hartnett, Jr., Esquire, unlawfully deposed the Plaintiff without first obtaining approval by the Court and filing a Motion to Depose pursuant to Judge Sleet's Scheduling Order of July 28, 2006.

2. Defendant, Dr. Sylvia Foster, and her representative counsel are permitted to attend a legitimately noticed deposition of a witness in a case in which Dr. Sylvia Foster is a party. Pursuant to Local Rule 30.3 of the United State District Court, District of Delaware Local Rules; the following individuals are permitted to attend depositions in a case: (1) the deponent, (2) counsel for any party and members and employees of their firms, (3) a party who is a natural person, (4) an officer or employee of a party which is not a natural person designated as its

representative by its counsel, (5) counsel for the deponent, and (6) any consultant or expert designated by counsel for any party.

3. At the time of the deposition of Jimmie Lewis, counsel for Dr. Foster, Carol Antoff, Esquire, was a member of the firm Reger Rizzo Kavulich & Darnall in Wilmington, Delaware. Ronald W. Hartnett, Jr., Esquire was also a member of the same firm and was asked to attend the deposition of the Plaintiff. Therefore, as counsel for Dr. Foster, Mr. Hartnett, Jr. was permitted to attend the deposition of the Plaintiff pursuant to the Local Court Rules.

Therefore, in light of the arguments submitted above and responses thereto, Defendant, Dr. Sylvia Foster, respectfully requests this Honorable Court to deny the Plaintiff's Motion for Declaration Order to Seal Ron Hartnett Deposition of the Plaintiff.

RESPECTFULLY SUBMITTED,  
REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr.  
Louis J. Rizzo, Jr., Esquire  
Delaware State Bar I.D. No. 2565  
Ronald W. Hartnett, Jr., Esquire  
Delaware State Bar I.D. No. 4497  
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Wilmington, DE 19801  
(302) 652-3611  
Attorney for Defendant Dr. Sylvia Foster

DATED: 01-16-2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS, )  
                        )  
Plaintiff,         ) C.A. No.: 04-1350 (GMS)  
                        )  
v.                    )  
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SYLVIA FOSTER, LANCE SAPERS, )  
DAVE MOFFITT, R. GRAY,      )  
MR. JOHNSON, JOHN JOE,     )  
                        )  
Defendants.         )

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 16th day of January, 2007 that a true and correct copy of **DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S MOTION FOR DECLARATION ORDER TO SEAL RON HARTNETT DEPOSITION OF THE PLAINTIFF** has been served electronically and/or by first class mail, postage prepaid, to the following:

Jimmie Lewis  
SBI#506622  
1181 Paddock Road  
Delaware Correctional Center  
Smyrna, DE 19977

Gregory E. Smith  
Deputy Attorney General  
820 North French Street, 7<sup>th</sup> Floor  
Carvel State Office Building  
Wilmington, DE 19801

REGER RIZZO KAVULICH & DARNALL LLP

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Attorney for Defendant Dr. Sylvia Foster

Dated: 01-16-2007